



Mutual Exchange Policy

1. Introduction

A mutual exchange is a procedure that allows Council tenants to swap homes and tenancies with other social housing tenants. Mutual exchanges can only be refused under certain grounds and housing providers are required to make a decision on whether to give permission to grant the mutual exchange within 42 days.

2. Purpose

The council recognises that promoting mutual exchanges encourages tenant mobility and helps us make best use of our housing stock. Therefore, this policy defines the Council's firm commitment to providing our tenants with a good quality service in terms of giving advice, processing and assisting in mutual exchanges. The policy has been updated in line with the Council's new allocations policy (2014) and due to the introduction of the Localism Act 2011.

3. Scope

This extends to all operational areas within Housing but more specifically Tenancy Services who perform the Housing Management function.

4. Roles, Responsibility and Authority

New Tenancy and Exchange Officers will take the lead on advising, processing and offering tenants assistance with their mutual exchange application. This includes preparing the paperwork, liaising with the void inspector to arrange property inspections, preparing landlord references and overseeing the exchange of keys.

New Tenancy and Exchange Officers, in conjunction with the neighbourhood management teams, will determine whether exchange applications are accepted or refused by referring to this policy and the legal requirements as per the Housing Act 1985. If refused by the Council, the tenant concerned will be clearly advised of the reasons for the refusal. The tenant has the opportunity to appeal the outcome, in which case a housing manager who has had no input in the case will conduct one further review of the decision.

5. Quality Management System Requirements

General Requirements:

Finding a suitable exchange

As a Swindon Borough Council tenant, you can register online at www.homeswapper.co.uk free of charge to search for an appropriate exchange partner. A large number of people across the UK use this service to find properties that match their requirements.

Applying for a mutual exchange

Tenants can apply for a mutual exchange by completing a mutual exchange application form. You can request an application form or download one from www.swindon.gov.uk. Once all parties' forms are received, the 42 day period will start on the receipt date of the final party form. We will provide tenants with a leaflet that gives advice about the process.

Determining eligibility to exchange

Secure tenants and secure flexible tenants have the legal right to mutually exchange homes with another council or registered social landlord tenant anywhere in the UK subject to certain conditions set out in the Housing Act 1985, schedule three (see appendix one). If tenants have lost their security of tenure, for example through not occupying their property as their sole or principal home, they no longer have the right to exchange.

The particular grounds for refusal can be found in appendix one. However, some specific areas where permission to exchange may be considered further are as follows: -

Arrears and other charges

Rent arrears, other charges that form conditions of tenancy (Former Tenancy Debts, Removal Charges) or charges that form obligations of tenancy (Repair) should be cleared prior to exchange. Although exchange applications can be agreed on condition that this occurs.

However, in light of the Housing benefit size-criteria restrictions (Bedroom Tax), for those affected and wishing to downsize this may not be achievable and failure to move could increase arrears and cause homelessness. Where both under-occupation and arrears are present, these cases can be agreed if the move is within Swindon Borough Council stock, but should be discussed with neighbourhood managers prior to a decision being reached.

Where there are rent arrears, the exchange will only be agreed if (a) there is a sustainable repayment plan, evidenced and agreed and (b) that it is a condition of the new tenancy that the arrears be paid.

Under-Occupation

We will carefully consider the housing need of exchange applicants (as per our allocations policy) and whether larger properties would subject tenants to Housing Benefit size-restriction rules (Bedroom Tax). Normally, under-occupation based on these two factors should not be created. However, factors which may influence decision to allow under-occupation include:

1. Are tenant's currently under-occupying proposing to maintain this under-occupation or will they lessen it. How tenants are managing their current tenancy.
2. Are there medical conditions or other factors that necessitate a larger property? What evidence do we have and is further information required? - In certain cases children with disabilities override the under-occupancy Housing Benefit regulations.
3. Length of time tenants would be under-occupying, for example, are whether any children would be close to cut-off points.
4. Type of property they wish to move into. Is there a high demand for this type of property from tenants who would not be under-occupying the property?
5. Affordability, tenancies must be financially viable. Therefore, for example, the Council would be looking at whether the tenant is in long-term sustainable employment.

Anti-social behaviour

Whilst consent to exchange can be withheld in certain ASB cases depending on the actions undertaken, New Tenancy and Exchange Officers may liaise with Neighbourhood Housing Managers/Officers regarding whether an exchange can proceed. External exchanges to other local authorities/housing associations may not be viable options in these cases, and the need to share information will be discussed with the tenant.

Disabled Adaptations

This will be a question of degree. Some properties have minor adaptations or adaptations that are no longer in use. This would need to be balanced against those properties that have had extensive adaptations or were specifically designed from new.

Refusing the mutual exchange

If the decision to refuse an exchange is reached, both parties will be notified in writing within the 42 day period. Particulars will only be provided to the tenant who is affected by them. The specific ground for refusal will be quoted (appendix 1)

Tenants will only have the right to exchange when: -

- ✓ The landlord has to give written consent
- ✓ The landlords consent can only be withheld in certain circumstances (see above and appendix 1)
- ✓ The landlord must specify any decision to refuse assignment within 42 days of the tenant's application

If refused by the Council, the tenant concerned will be clearly advised of the reasons for the refusal. The tenant has the opportunity to appeal the outcome, in which case, a Housing Manager who has had no input in the case will conduct one further review of the decision.

Accepting the mutual exchange

Subject to the exchange criteria being met, including satisfactory property inspections and landlord references, tenants will be advised as to what type of tenancy then will be taking on, which could be as follows: -

Secure Tenants – deed of assignment (step in others shoes and take over the other tenants' tenancy type and terms)

Flexible Secure Tenants – surrender and granting of new flexible secure tenancies

A suitable time and place will be arranged to complete the exchange with the parties involved.

6. Implementation, Monitoring and Review

This policy will be implemented – April 2014

We place high regard to continuous improvement and therefore this policy will be monitored reviewed and evaluated in 3, 6, 12 month periods which allows for a pro-active management of the policy.

This policy is linked to the current Housing Business Plan 2013 – 2014

Cross Reference:

Corporate Reference:

This version: January 2019

Next Review: July 2019

Lead Officer: Tenancy Support Manager (Enforcement)

Appendix one

Housing Act 1985 Part IV Section 92 - Assignments by way of exchange

- (1) It is a term of every secure tenancy that the tenant may, with the written consent of the landlord, assign the tenancy to another secure tenant who satisfies the condition in subsection (2).
- (2) The condition is that the other secure tenant has the written consent of his landlord to an assignment of his tenancy either to the first-mentioned tenant or to another secure tenant who satisfies the condition in this subsection.
- (3) The consent required by virtue of this section shall not be withheld except on one or more of the grounds set out in Schedule 3 (1985 Act), and if withheld otherwise than on one of those grounds shall be treated as given.
- (4) The landlord may not rely on any of the grounds set out in Schedule 3 unless he has, within 42 days of the tenant's application for the consent, served on the tenant a notice specifying the ground and giving particulars of it.
- (5) Where rent lawfully due from the tenant has not been paid or an obligation of the tenancy has been broken or not performed, the consent required by virtue of this section may be given subject to a condition requiring the tenant to pay the outstanding rent, remedy the breach or perform the obligation.
- (6) Except as provided by subsection (5), consent required by virtue of this section cannot be given subject to a condition, and a condition imposed otherwise than as so provided shall be disregarded.

Schedule 3 Grounds for withholding consent to assignment by way of exchange

Ground 1

The tenant or the proposed assignee is obliged to give up possession of the dwelling-house of which he is the secure tenant in pursuance of an order of the court, or will be so obliged at a date specified in such an order

Ground 2

Proceedings have been begun for possession of the dwelling-house of which the tenant or the proposed assignee is the secure tenant on one or more of grounds 1 to 6 in part I of Schedule 2 (grounds on which possession may be ordered despite absence of suitable alternative accommodation), or there has been served on the tenant or the proposed assignee a notice under section 83 (notice of proceedings for possession) which specifies one or more of those grounds and is still in force.

Ground 2A (Added by Section 191 of the Housing Act 2004)

A suspended possession order is in force on the grounds of anti-social behaviour, or where an application has been made for an ASB injunction, anti-social behaviour order (ASBO) or demotion order in respect of the tenant or the proposed assignee, or

a person residing with a party to the exchange; or an ASB injunction or ASBO is in force against such persons.

Ground 3

The accommodation afforded by the dwelling-house is substantially more extensive than is reasonably required by the proposed assignee.

Ground 4

The extent of the accommodation afforded by the dwelling-house is not reasonably suitable to the needs of the proposed assignee and his family

Ground 5

The dwelling house:

(a) forms part of or is within the cartilage of a building which, or so much of it as is held by the landlord, is held mainly for purposes other than housing purposes and consists mainly of accommodation other than housing accommodation, or is situated in a cemetery, and

(b) was let to the tenant or a predecessor in title of his in consequence of the tenant or predecessor being in the employment of:

the landlord, a local authority, a new town corporation, the Development Board for Rural Wales, an urban development corporation, or the governors of an aided school.

Ground 6

The landlord is a charity and the proposed assignee's occupation of the dwelling-house would conflict with the objects of the charity.

Ground 7

The dwelling-house has features which are substantially different from those of ordinary dwelling-houses and which are designed to make it suitable for occupation by a physically disabled person who requires accommodation of the kind provided by the dwelling-house and if the assignment were made there would no longer be such a person residing in the dwelling house.

Ground 8

The landlord is a housing association or housing trust which lets dwelling-houses only for occupation (alone or with others) by persons whose circumstances (other than merely financial circumstances) make it especially difficult for them to satisfy their need for housing and if the assignment were made there would no longer be such a person residing in the dwelling-house.

Ground 9

The dwelling-house is one of a group of dwelling-houses which it is the practice of the landlord to let for occupation by persons with special needs and a social service or special facility is provided in close proximity to the group of dwelling-houses in order to assist persons with those special needs and if the assignment were made there would no longer be a person with those special needs residing in the dwelling-house.

